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9 In re MARK E. DELONG,

10 Debtor.

11 _____
12 BANK OF EASTERN OREGON, an Oregon
13 banking corporation,

14 Plaintiff,

15 v.

16 MARK E. DELONG,

17 Defendant.
18 _____

Case No. 17-34395-pcm11

Adversary Proceeding No.

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
PURSUANT TO 11 USC §523(a)(2)(A)**

JURISDICTION AND VENUE

20 1. This action contains a core claim for relief over which this court has
21 jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334 and United States District Court Local Rule
22 2100-1. The claims for relief arise under 11 USC § 523(a)(2)(A). Venue is proper pursuant to
23 28 USC § 1409.

FACTS

24 2. Mark E. Delong (“Delong”) is an individual. Bank of Eastern Oregon (“Bank”)
25 an Oregon banking corporation.

Page 1 – **COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT**

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1 3. On November 28, 2018 Delong filed his Chapter 11 petition herein (“Petition
2 Date”).

3 4. This adversary proceeding is timely filed in accordance with Doc # 109 filed in
4 the Chapter 11 case.

5 5. At all material times hereto Delong was the obligor to Bank under Promissory
6 Note Nos. 8512, 8579 and 8546 (“Notes”). The amounts due under the Notes as of October 16,
7 2017, in addition to attorneys’ fees and costs, are:

Note 8512	
Principal	\$3,275,016.00
Accrued interest as of 10/16/17:	\$ 871,015.70

Note 8579	
Principal	\$1,547,363.09
Accrued interest as of 10/16/17:	\$ 203,166.39

Note 8546	
Principal	\$1,873,364.17
Accrued interest as of 10/16/17:	\$ 448,468.49

14 5. The obligations under the Notes are secured by liens in real property as follows:

15 5.1 A deed of trust (“Trust Deed 1”) recorded on December 31, 2013 in the
16 records of Malheur County, Oregon as Document No. 2013-5383 under which Delong is
17 grantor, Bank is beneficiary and Malheur County Title Company, Inc. is trustee.

18 5.2 A deed of trust (“Trust Deed 2”) recorded on December 31, 2013 in the
19 records of Malheur County, Oregon as Document No. 2013-5384 under which Delong is
20 grantor, Bank is beneficiary and Malheur County Title Company, Inc. is trustee.

21 5.3 A deed of trust (“Trust Deed 3”) recorded on December 31, 2013 in the
22 records of Malheur County, Oregon as Document No. 2013-5385 under which Delong is
23 grantor, Bank is beneficiary and Malheur County Title Company, Inc. is trustee.

24 5.4 A deed of trust (“Trust Deed 4”) recorded on November 10, 2004 in the
25 records of Malheur County, Oregon as Document No. 2004-7992, as modified, under which
26 Delong is grantor, Bank is beneficiary and American Title Company of Malheur is trustee.

1 6. The obligations under the Notes are also secured by two Agricultural Security
2 Agreements (“Security Agreements”) under which Delong is grantor and Bank is lender. The
3 Security Agreements are further evidence by the following UCC filings: (1) Filing No. 6761018
4 originally filed on November 29, 2004, and (2) Filing No. 6761002 originally filed on November
5 29, 2004.

6 7. Delong has a domestic partner, Pattie Baker, an individual, with whom he has
7 shared a residence and other domestic arrangements at all material times hereto.

8 8. The Trust Deeds and Security Agreements provide, among other things, that the
9 Bank has a security interest in the crops and other products and proceeds of the Bank's real and
10 personal property collateral securing the Notes.

11 9. Prior to the Petition Date, Delong colluded with Pattie Baker and possibly with
12 other persons to divert such products and proceeds and to avoid transferring such products and
13 proceeds to the Bank. The methods employed by Delong include, without limitation, purporting
14 to enter into a “lease agreement” with Pattie Baker under which Pattie Baker and Delong
15 together enjoyed the benefits of the Bank’s collateral and used the cash proceeds without the
16 knowledge or consent of the Bank. The Bank was first made aware of the “lease agreement” at a
17 hearing in the Chapter 11 case held on February 27, 2018.

18 10. The total amount of collateral subject to such diversion is unknown to the Bank,
19 but includes without limitation the sum of no less than \$47,500.00 paid to attorneys prior to the
20 Petition Date.

CAUSE OF ACTION

22 11. The Bank realleges paragraphs 1 through 10.

23 12. At all material times hereto the Bank had no knowledge of the existence of the
24 scheme between Delong and Pattie Baker.

25 13. Delong intended to hide the diversion and unauthorized use of the Bank's
26 collateral from the Bank.

1 14. By reason of Delong's acts and omissions, Delong obtained money that belonged
2 to the Bank as a secured party, which should have been used to repay the Notes.

3 15. The amount of collateral subject to the diversion as a result of Delong's scheme
4 with Pattie Baker constitutes a nondischargeable debt within the scope of 11 USC §523(a)(2)(A),
5 in that such scheme was a fraud upon the Bank.

6 16. The total amount of the debt that is nondischargeable is presently unknown to
7 the Bank, but is no less than \$47,500.00.

8 WHEREFORE, plaintiff prays:

9 1. For a judgment in favor of the plaintiff and against Delong for the sum of
10 the non-dischargeable debt, plus costs;

11 2. For such other relief as may be just and equitable.

12 Date: July 5, 2018.

13 /s/ Bennett H. Goldstein

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